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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,127	02/07/2001	Ken Kutaragi	444.20.01	7693

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FITCH EVEN TABIN AND FLANNERY  
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CHICAGO, IL 60603-3406

EXAMINER

CHILCOT, RICHARD E

ART UNIT PAPER NUMBER

3627

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/779,127

Applicant(s)

KUTARAGI ET AL.

Examiner

Richard E. Chilcot, Jr.

Art Unit

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**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 12-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Call in view of either Johnson or Wichter et al.

Call teaches a sales managing system, method and retail sales system having a shared server 430 and the web register module 420 added to the retailer's existing inventory control system 322 maintain a connection via the Internet or a dial-up modem pathway which permits the inventory control system 422 to upload to the shared server 430 changes to the products (specified by universal product code) being offered for sale, and the quantity on hand. Each time any sale is made by any point of sale register 421 in the physical retail store or by the web register 422, the quantity on hand value associated with the sold product's code is altered. Similarly, when stock is replenished, the inventory control system 422 reflects the increased quantity on hand. The quantity on hand information passed as message information at 422 permits the shared sales server to maintain a database for each retailer served which indicates the products available for sale and the quantity on hand. When the quantity on hand equals or exceeds the quantity ordered, the on line order is accepted and passed at 434 from the shared server to the web register module 420 which posts the sale in the same way that a point of sale register posts a sale. The fact that the shared server thus "knows" the inventory status allows the shared server to accurately inform the customer when shipment can be expected for goods on hand and when goods, which must be replenished will be shipped with a delay. Orders sent to the inventory control system at 434 include the specification of products sold (by their universal product code designation) and the quantities of each sold, as well as address information for billing and shipping. Credit card transactions are handled on a shared basis using standard e-commerce software, either by sending encrypted credit card and other billing

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information to the retailer for handling, or actually performing the monetary transaction with the customer in its entirety on the shared server, and sending periodic payments and accounting records to the retailer. Call goes on to teaches the inventory control system functions include order fulfillment, inventory pricing, vendor ordering, reordering and payment, and warehouse management functions. Call also describes how the user decides to purchase the described product, the "shopping basket" functions of the shared sales server 430 are used to complete the order. Because the shared server 430 maintains a database for that retailer containing the quantity on hand values for each product offered by that server, the customer can be immediately informed if the shipment cannot be made whereas, if the product is available at the retailer's store or warehouse, the online customer's order can be confirmed for prompt delivery. When the order is completed by the shared server 430, the order 434 which includes the identification of the customer (name, shipping address, etc.) and the identification of the products sold (universal product codes plus quantities sold) is transmitted to the retailer's inventory control system 420. As explained in more detail below in connection with FIG. 7, the shared server 430 adjusts the quantity on hand values in its database, and the inventory control system 420 updates its database, with a cross check between the two being made if desired to insure consistency and synchronization. See col. 29. As can be seen the customer is aware of the quantity in stock from the retailer as well as the quantity in the warehouse.

As noted above, Call teaches all of the elements of the claimed invention with the exception of the "ratio" feature set forth in the claims and argued by the applicants. On

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the other hand Johnson teaches a virtual stock number as seen in col. 2, which states, "inventory information may be retrieved from one or more databases acting as part of the present invention. Available inventory information may include, but is not limited to, items presently in stock, number of items ordered, number of items shipped, number of items on order from supplier, anticipated date of receipt from supplier, number of items received in last shipment, and last shipment receipt date." Also, Wichter et al. teach a method of calculating virtual stock as seen claim 22.

Accordingly, to add the "ratio" feature to the system of Call, as taught by either Johnson or Wichter et al., would have been obvious for one having ordinary skill in the art at the time of the invention. The motivation for such a modification would have provided a more accurate inventory account for better customer service.

### ***Response to Arguments***

Applicant's arguments with respect to claims 12-38 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

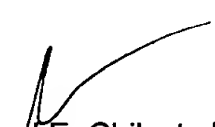
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard E. Chilcot, Jr. whose telephone number is 703-305-4716. The examiner can normally be reached on 5/4/9 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard E. Chilcot, Jr.  
Primary Examiner  
Art Unit 3627